

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

In The United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 14,664

CLARENCE B. DANDRIDGE,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

146

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
For the
District of Columbia Circuit
FILED NOV 28 1958

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JOINT APPENDIX

272

CRIMINAL DOCKET

United States District Court for the District of Columbia

CASE CLOSED

UNITED STATES	:	Criminal No. 906-56
vs.	:	G. J. No. 1043-56
CLARENCE B. DANDRIDGE	:	ASSAULT WITH DANGEROUS WEAPON, CARRYING DANGER- OUS WEAPON (22 DCC 502, 3204)

ATTORNEYS: U. S. Attorney Stevas; Attorneys for the Defendant - H.
Nathaniel Blaustein, W. T. Pace 820 H St., N. E.

* * * * *

274 DATE

PROCEEDINGS

- 1957 Jul 24 - Certified copy of Judgment from the U. S. Court of Appeals for the District of Columbia Circuit **AFFIRMING** the Judgment of the District Court, filed. Dated 7-8-57.
- 1958 May 12 - Certified copy of **ORDER** from the Supreme Court of the United States **ORDERING** that the Judgment of the United States Court of Appeals be **REVERSED**; and the case is **REMANDED** to the United States District Court for the District of Columbia with directions to permit Deft. to change his plea, filed. Dated 4-7-58.
- 1958 Jun 9 - **ORDER APPOINTING** William T. Pace as counsel to defend, filed. **HOLTZOFF, J. (N)**
- 1958 Jun 9 - Pursuant to the order of the Supreme Court of the United States, Defendant's Plea of Guilty to Count one entered on October 16, 1956 is **VACATED** and **SET ASIDE** and the sentence imposed on said plea on Dec. 7, 1956, is **VACATED**. **ORAL MOTION** of the **GOVERNMENT** To vacate the order dismissing Count two, is set aside and Count two is reinstated. (Order to be presented) H. N. Blaustein, counsel for defendant is permitted to withdraw. Attorney H. N. Blaustein present. **HOLTZOFF, J.**
(Reporter-Spatzer)

CRIMINAL DOCKET (Cont'd)

- 1958 Jun 16 - **APPEARANCE** of William T. Pace Entered.
- 1958 Jun 19 - **MOTION** to dismiss all counts of the indictment and for other appropriate relief and memorandum in support of motion, filed, Cert. of Serv.
- 1958 Jul 2 - **SUPPLEMENTAL MOTION** of defendant to dismiss indictment and for appointment of counsel, filed (by deft.)
- 1958 Jul 2 - **MOTION** of defendant to suppress evidence and re-enactment, Cert. of Service, filed (Atty. William T. Pace)
- 1958 Jul 3 - **MOTION** of defendant for issuance of subpoena, **AFFIDAVIT** in support thereof, filed and **GRANTED**. **TAMM, J.**
- 1958 Jul 11 - **THE FOLLOWING MOTIONS ARE MADE PART OF CRIMINAL CASE NO. 619-58: (By direction of the Court)**
- MOTION of DEFENDANT** to dismiss all counts of indictment and for other appropriate relief, and supplemental motion to dismiss indictment (both motions cont'd. for hearing on 8-8-58);
- MOTION of DEFENDANT** to suppress evidence and re-enactment (cont'd.) to be heard by trial Judge) Motion for appointment of counsel: **ON COURT's MOTION** the above entitled case is **DISMISSED; DISMISSAL ENTERED; Deft. released. Release Issued. Attorney William Pace present. TAMM, J. (Rep.-Williamson) Cert. filed.**

* * * * *

256 [Filed September 4, 1956]

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Holding a Criminal Term

Grand Jury Impanelled June 28, 1956, Sworn in on July 3, 1956

The United States of America	:	Criminal No. 906-56
v.	:	Grand Jury No. 1043-56
Clarence B. Dandridge	:	Assault with a Dangerous Weapon Carrying a Dangerous Weapon (22 D.C.C. 502, 3204)

The Grand Jury charges:

On or about July 8, 1956, within the District of Columbia, Clarence B. Dandridge made an assault on Robert W. Allen with a dangerous weapon, that is, a loaded pistol.

SECOND COUNT:

On or about July 8, 1956, within the District of Columbia, Clarence B. Dandridge did carry, openly and concealed on or about his person, a dangerous weapon, that is, a pistol without a license having been issued as provided by law.

/s/ Oliver Gasch

Attorney of the United States in
and for the District of Columbia

A TRUE BILL:

/s/ Leo A. Dodd.

Foreman.

257 [Filed September 7, 1956]

PLEA OF DEFENDANT

On this 7th day of September, 1956, the defendant Clarence B. Dandridge, appearing in proper person and without counsel present, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads not guilty thereto.

The defendant is remanded to the District of Columbia Jail.

* * * * *

258 [Filed October 16, 1956]

WITHDRAWAL OF PLEA

On this 16th day of October, 1956, the defendant Clarence B. Dandridge, appearing in proper person and by his attorney H. N. Blaustein, in open Court withdraws his plea of not guilty to the indictment heretofore entered and pleads guilty to Count One of the indictment.

* * * * *

259 [Filed November 2, 1956]

On this 2nd day of November, 1956, came the attorney of the United States; the defendant in proper person and by his attorney, H. N. Blaustein, Esquire; whereupon the motion of the defendant, for leave to withdraw his plea of guilty heretofore entered, after argument by counsel, is by the Court denied.

The defendant is remanded to the District of Columbia Jail.

* * * * *

260 [Filed December 7, 1956]

On this 7th day of December, 1956, came the attorney of the United States; the defendant in proper person and by his attorney, H. Nathaniel Blaustein, Esquire; and upon consideration of the government's oral motion for leave to dismiss remaining counts of the indictment in the above entitled case, it is ordered that leave to dismiss remaining counts of the indictment be and the same is hereby granted.

Whereupon the United States Attorney dismisses remaining counts of the indictment in the above entitled case in open Court.

* * * * *

JUDGMENT AND COMMITMENT

261 [Filed December 13, 1956]

On this 7th day of December, 1956, came the attorney for the government and the defendant appeared in person and by counsel, H. Nathaniel Blaustein, Esquire.

IT IS ADJUDGED that the defendant has been convicted upon his plea of guilty of the offense of ASSAULT WITH A DANGEROUS WEAPON, as charged in Count One and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

The defendant Clarence B. Dandridge, in proper respectfully moves the Court to grant this motion to dismiss indictment; and in support thereof it is stated as follows:

* * * * *

66 The defendant contends that due to negligence and errors on the part of the Government, cause him to be denied his "Constitutional Right to a Speedy Trial."

The defendant has been in custody, and imprisoned since July 8, 1956, and now in July, 1958, he finds himself in this position, one witness is now deceased, the other two witnesses, he is unable to locate.

* * * * *

/s/ Clarence B. Dandridge
Defendant

67 [Filed July 2, 1956]

MOTION TO SUPPRESS EVIDENCE AND RE-ENACTMENT

Comes now the defendant, CLARENCE B. DANDRIDGE, by his attorney, WILLIAM T. PACE, appointed by the Court, and moves this Honorable Court to suppress all written statements, oral statements and re-enactment of any and all facts now obtained or in the possession of the Police Department and other public authorities, and for such other relief and shows the Court as follows:

1. That certain statement were taken from the defendant by public authorities in violation of law and rules of criminal proceedings.
2. That the defendant was not taken to the United States Commissioner or committing magistrate "without unnecessary delay."
3. For such other and further relief as may be appropriate at the time of the hearing of this motion, and for such other facts as will be presented to the Court at the time of hearing this motion.

/s/ William T. Pace

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Three (3) years to Nine (9) years.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Alexander Holtzoff
United States District Judge

262 [Filed January 4, 1957]

MEMORANDUM

Motion to withdraw plea of guilty, filed on December 20, 1956, is denied. This is a repetition of a prior motion.

/s/ Alexander Holtzoff
United States District Judge

263 [Filed June 19, 1958]

**MOTION TO DISMISS ALL COUNTS OF INDICTMENT AND
FOR OTHER APPROPRIATE RELIEF**

Comes now the defendant, CLARENCE B. DANDRIDGE, by WILLIAM T. PACE, attorney appointed by the Court, and moves this Honorable Court to dismiss this indictment in all counts herein, and for other appropriate relief.

1. That the defendant's right to a speedy and public trial under Amendment 6 to the U. S. Constitution has been violated.
2. There has been unnecessary delay in bringing the defendant to trial.
3. For such other and further relief as may be appropriate at the time of the hearing of this motion and for such other facts as will be presented to the Court at the hearing of this motion.

/s/ William T. Pace

265 [Filed July 2, 1958]

Supplemental Motion To Dismiss Indictment and For Appt. of Counsel

271 [Filed July 11, 1958]

On this 11th day of July, 1958, came the attorney of the United States; the defendant in proper person and by his attorney, Wm. Pace, Esquire; and upon consideration of the Court's oral motion for leave to dismiss the indictment in the above entitled case, it is ordered that leave to dismiss the indictment be and the same is hereby granted.

Whereupon the Court dismisses the above entitled case in open Court.

BY DIRECTION OF:

Edward A. Tamm

Presiding Judge

276 [Filed July 7, 1958]

Grand Jury Impanelled May 1, 1958, Sworn in on May 6, 1958

The United States of America	:	Criminal No. 619-58
v.	:	Grand Jury No. Orig.
Clarence B. Dandridge	:	Carrying Dangerous Weapon Assault with Dangerous Weapon (22 D.C.C. 3204, 502)

The Grand Jury charges:

On or about July 8, 1956, within the District of Columbia, Clarence B. Dandridge carried, openly and concealed, on or about his person, a dangerous weapon, that is, a pistol, without a license having been issued as provided by law.

SECOND COUNT:

On or about July 8, 1956, within the District of Columbia, Clarence B. Dandridge made an assault on Robert W. Allen with a dangerous weapon, that is, a pistol.

/s/ Oliver Gasch

Attorney of the United States in
and for the District of Columbia

A TRUE BILL:

/s/ Raymond L. Bland

Foreman.

JUL -8 1958

277 [Filed July 11, 1958]

PLEA OF DEFENDANT

On this 11th day of July, 1958, the defendant Clarence B. Dandridge, appearing in proper person and by his attorney William T. Pace, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads not guilty thereto.

The following motion of the defendant filed in Crim. Case No. 906-56 are directed by the Court to be made a part of this case also:

Defendant's motion to dismiss all counts of indictment and for other appropriate relief, and supplemental motion to dismiss indictment (continued for hearing on August 8, 1958); motion for appointment of counsel granted and it is ordered by the Court that William T. Pace defend the defendant; motion to suppress evidence and re-enactment (to be heard by trial Judge)

The defendant is remanded to the District Jail.

By direction of
EDWARD A. TAMM
 Presiding Judge
 Criminal Court #1

281 [Filed August 12, 1958]

ORDER

This matter coming on for hearing on the defendant's motion to dismiss indictment for lack of a speedy trial, after argument by counsel, the Court finding that there has been no unnecessary delay, in bringing the defendant to trial in this case, it is by the Court this 12th day of August, 1958,

ORDERED that the defendant's motion to dismiss the indictment for lack of a speedy trial be, and the same hereby is, denied.

/s/ Burnita Shelton Matthews
JUDGE

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1 [Filed November 6, 1958]

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	
	:	Criminal No. 619-58
v.	:	
CLARENCE B. DANDRIDGE	:	
Defendant.	:	

Washington, D. C.,
August 13, 1958.

The above-entitled action came on for trial on the merits, before the
HONORABLE JOSEPH C. McGARRAGHY, United States District Judge, and
a Jury, at 10:30 o'clock a.m.

APPEARANCES:

On Behalf of the United States of America:

FRED L. McINTYRE,
Assistant United States Attorney.

On Behalf of the Defendant:

WILLIAM PACE, ESQ.

* * * * *

ROBERT W. ALLEN

4 called as a witness by the Government, being first duly sworn, was examined
and testified as follows:

DIRECT EXAMINATION

* * * * *

5 Q. Now, Mr. Allen, directing your attention to about two years ago,
July 8, 1956, at that time did you know a person by the name of Dandridge,
otherwise known as Rez Dandridge? A. Yes, I did.

 Q. How long had you known Dandridge? A. I don't know, I'd say about
three or four years.

* * * * *

 Q. Did you have occasion to see Dandridge on July 8, 1956? A. I did.

6 Q. Where were you on July 8, 1956? A. I was at 357 McLean Avenue,
Southwest.

* * * * *

Q. Is that in the District of Columbia? A. It is.

Q. Do you know whose home that is? A. It was Miss Julia Washington, Miss Julia Washington.

* * * * *

Q. Who were you visiting on that date? A. I was visiting Miss Washington.

Q. She was the owner of the house? A. Yes, sir.

Q. Do you remember anybody else that was there? A. Yes, I do.

Q. Who was there? A. Well, there was Frederick Taylor, John Johnson, Hillary Johnson, Elizabeth Johnson, and Clarence B. Dandridge, Equilla Dandridge.

Q. Equilla is Dandridge's wife? A. Yes, sir, I believe so.

* * * * *

Q. What time did you get to Miss Washington's house? A. I think it was between 12 and 2.

Q. In the afternoon? A. In the afternoon.

* * * * *

Q. What else did you do? A. Well, we started to drink.

Q. What did you have to drink? A. Whiskey and beer.

Q. Do you remember who was drinking? A. The same names I called before.

* * * * *

Q. And did you have occasion to see Dandridge on that afternoon? A. I did.

Q. Do you remember anything that took place between you and Dandridge? A. I can't say that I do.

Q. Well, do you ever remember talking to Dandridge? A. Yes, sir.

Q. What were you talking about? A. He was having a conversation, we were discussing the ball game, and we all sat there and drinking.

Q. Was he drinking? A. Yes, sir.

Q. Do you know how much you had to drink? A. I can't say, quite a bit.

Q. All right. Now, do you know where Dandridge lived at that time?

A. I think he lived at 357.

Q. That is the same place? A. Yes, sir.

Q. What portion of the house was his, do you know? A. I think it was the basement.

* * * * *

9 Q. Did there come a time when you saw Dandridge again sometime there in the evening or the afternoon, late evening? A. Yes, sir.

Q. Would you explain the circumstances under which you saw Dandridge again? A. After the drinking?

Q. Yes. A. I don't remember seeing him again after that until I was about ready to come out. I was getting ready to come home then.

Q. Who were you with at that time? A. I was with Frederick Taylor.

Q. Where were you at that particular time? Were you in the house?
A. I was in the house, yes, sir.

Q. Do you remember what room you were in? A. I was in the dining room. There is three rooms; front room, dining room, and kitchen, on the first floor.

Q. You were in the middle room, is that correct? A. Yes, sir.

Q. And about where were you in the middle room, about where was your location? A. About middle ways, about in the center of it.

10 Q. How far would that be from an entrance coming in to that center room? A. I'd say about six feet.

Q. All right. Now, what do you recall happening as you were there about six feet from the entrance in the center room? A. Well, I didn't pay much attention, I don't know exactly what took place. All I know when I was on the way out, somebody popped up in the doorway, and all I see was a flash of light and heard the shots, and I looked and I see I was the one that got hit.

Q. Did you ever find out what that flash of lightning was? A. Yes, sir.

Q. What was it? A. It was a pistol, it was a gun shot.

Q. Do you know who did it? A. Mr. Dandridge.

* * * * *

CROSS-EXAMINATION

* * * * *

- 12
- 15 Q. And did you start drinking that Friday? A. I started drinking, but not out. I stayed home that Friday.

* * * * *

Q. Now, when did you start drinking on Saturday morning? A. Well, about 12 o'clock, because I didn't work that Saturday.

* * * * *

- 16 Q. What did you start drinking that Saturday? A. Beer, whiskey.

* * * * *

Q. Then when was it, after you started drinking, that you came to the house where Dandridge lived at 357? A. I guess about 7 or 8 o'clock Saturday evening.

* * * * *

- 17 Q. How much did you have to drink while you were over at that house where Dandridge lived that Saturday night for those two hours? A. I had
- 18 about two bottles of beer, about a jill of whiskey.

* * * * *

- 19 Q. And where did you go Sunday morning after you woke up at 9 o'clock? A. After I woke up I ate breakfast, I went back to 357 McLean Avenue.

* * * * *

- 20 Q. Now, the day before you got shot, that would be Saturday, did you and Mr. Dandridge have any scuffle or any words? A. I don't remember; we could have.

* * * * *

Q. And what would the argument be about? A. I don't know.

THE COURT: What did you say?

THE WITNESS: I don't know what it was all about.

THE COURT: Do you know if there was an argument?

THE WITNESS: I am not sure, but there could have been.

* * * * *

21 Q. And where did you see him for the first time, as you say about 2 or 3 o'clock Sunday? A. 357 McLean Avenue.

Q. Was that upstairs, or the first floor, or ground level, or was that down in his apartment? A. It was on the first floor.

22 Q. And what was said between the two of you at that time? A. I don't remember that.

* * * * *

Q. Now, did there come a time on Sunday that there was an argument while it was still light between you and Mr. Dandridge? A. I can't remember.

Q. You don't remember? A. No.

Q. How much had you been drinking that afternoon? A. I drank quite a bit.

Q. Why don't you remember, was it because you had too much to drink? A. It could have been.

* * * * *

Q. Now, do you remember having any argument at all during the daylight hours? A. I don't remember; it is possible it could have happened.

* * * * *

23 Q. Now, on the day you were shot after you went over to that house, do you remember having any fights with this man, physically touching and hitting? A. No, I don't.

Q. Could that have happened that day during the daylight hours? A. I don't know.

Q. It could have happened, but you don't remember? A. It might.

* * * * *

25 Q. Now, when you were over there on Sunday, were you angry, or mad, or provoked at the defendant Mr. Dandridge for anything that he had done? A. No, I was not.

Q. But yet, you don't remember whether you had any physical fights with him? A. I see no cause, no reason we should have fought.

Q. Did you have any razor or any knife with you on that Sunday? A. I did not.

Q. You are sure of that? A. Positive.

Q. Did you have any razor or knife with you when you were over at 357 on the Saturday before? A. No.

Q. Now, on that Saturday or the Sunday, did you ever while you were in that house, tell anybody that you had a knife or a razor? A. No.

26 Q. You are sure of that, or you just don't remember? A. (Long pause.) I don't carry a razor, period.

Q. Did you say that to anyone? A. Not that I remember; I don't think so.

Q. Not as you remember. Did you say it to this defendant? A. No.

Q. That you had a knife or a razor? A. No, sir.

Q. Do you recall saying anything to this defendant about cutting him?
A. I do not.

* * * * *

33 Q. And after you were shot, who was the first person to say anything to you? A. I think it was "Boogie."

Q. What did "Boogie" say? A. All I heard him, said I was shot, somebody had shot me.

Q. And what else did "Boogie" say? A. I can't remember all that, because after I got shot, I don't know, everything seemed to go bleary, or something.

* * * * *

34 Q. Were you carrying anything like a piece of paper, or a glass, or a bottle of gin or a bottle of beer in your hands when you left the kitchen to come to the center room, immediately before you were shot? A. I don't remember that either.

Q. You don't remember whether you had anything? A. I don't know, I could have had something in my hands, I was on my way home, but I don't remember. I could have had a hat or anything in my hands.

Q. Do you remember whether you were taking any beer or gin home?
A. No, I wasn't.

* * * * *

35 Q. Were you a little high, was your head buzzing? A. I wouldn't say that. I was feeling pretty good, though.

* * * * *

36 REDIRECT EXAMINATION

* * * * *

38 Q. What did you see first, did you see Dandridge after you saw the flash of lightning, as you have described it? A. It was after seeing the light, yes.

Q. You didn't see Dandridge until after the flash? A. After I was hit; I seen him after I seen the light.

* * * * *

39 HILLARY JOHNSON

was called to the witness stand and was interrogated by the Court, as follows:

THE COURT: How old are you?

THE WITNESS: Thirteen.

THE COURT: Thirteen?

THE WITNESS: Yes, sir.

THE COURT: What school do you go to?

THE WITNESS: Anthony Ward's.

THE COURT: What grade are you in?

THE WITNESS: Fifth.

* * * * *

41 DIRECT EXAMINATION

* * * * *

Q. Hillary, where do you live? A. 357 McLean Avenue, Southwest, Washington, D. C.

* * * * *

42 Q. And where did Dandridge live at that time? A. In the basement.

* * * * *

Q. Now, do you remember what was taking place at your home at 357 McLean Avenue on July 8, 1956? Were you there on that day? A. I was there.

43

* * * * *

44 A. I know my grandmother was there.

Q. Is your grandmother dead, is she dead at this time? A. Yes.

* * * * *

45 Q. Did you see anything occur between Dandridge and Allen or any of the other persons there? A. On the back porch, Mr. Dandridge and Mr. Allen was tussling on the back porch.

* * * * *

Q. Well, did you see any kind of an argument occurring between anybody out there in the kitchen? A. It was in the dining room Mr. Robert Allen and 46 Mr. Rez was arguing, and Mr. Rez left.

Q. Rez Dandridge left? A. Left out the house.

* * * * *

Q. All right. Now, did anything happen after that argument that you remember? A. Well, they were talking about baseball and things.

Q. Who was talking about baseball? A. Well, Mr. Jones and Mr.

"Boogie" was talking about it, and --

Q. That is Taylor? A. Yes, and Mr. Bill Linton.

Q. How about Robert Allen? A. Yes, he was in on it a little bit, too.

Q. Where were they talking about this baseball? A. In the dining room.

* * * * *

47 Q. When they left the kitchen they came into the dining room? A. Yes, sir.

Q. Is that the center room of your house? A. Yes, sir.

Q. Now, could you tell us what you saw after that? A. Well, I didn't see Mr. Rez come in. All I knew I heard a "pow" sound. I thought it was a firecracker, but he had shot through the drapes hanging from between the doorway and shot Mr. Allen.

Q. Who had shot through the curtain? A. Mr. Rez.

Q. This defendant over here? A. Yes, sir.

Q. What was Robert Allen doing when you saw this shot from behind the curtain? A. He was talking to Mr. "Boogie."

Q. Is that Taylor? A. Yes, sir.

* * * * *

50 Q. Now, you did see the person that did the shooting, is that correct?

Q. Yes, sir.

Q. And after you saw him and you identified him as Rez Dandridge, did you hear him say anything? A. Yes, he stepped out from behind the curtain and he pointed the gun at his wife and he said, "I should shoot you." Then she ran upstairs, and I ran upstairs to tell my mother and father that he had shot Mr. Allen. And she got to the door before I did, and my mother, she went on under my mother's bed and my mother pulled her out.

Q. She was under the bed? A. Yes.

Q. Was this Equilla Dandridge, now, that you are referring to? A. Yes, sir.

* * * * *

51 Q. Did you see anything in Rez Dandridge's hand at the time he stepped around from the curtain? A. Yes, he had a gun in his hand.

* * * * *

52 CROSS EXAMINATION

* * * * *

58 Q. Now, you said that you didn't see any knife or anything about Dandridge -- about Robert Allen when he hit the floor, is that right? A. No, sir, I didn't pay much attention. That is when I saw Mr. Rez with the gun. I wasn't looking at Mr. Robert, I was looking to see who it was and I saw Mr. Rez with the gun between his belly and his waistline, holding it down before he came in the door.

Q. You saw him holding the gun when he came in the door? A. Yes, after he shot he came in from behind the curtain, and he had the gun here, and he pulled it up and pulled it up, like this, to his wife and he said he should shoot her.

Q. Will you tell the jury what you meant when you said you could not see what was going on about Robert Allen after he hit the floor? Did somebody try to help him? A. Yes, somebody was trying to help him.

Q. Who was that that was trying to help him? A. It was Mr. "Boogie" -- no, Mr. "Boogie" -- I didn't pay much attention to the other person, I just saw Mr. "Boogie" and I looked at him, and turned around and looked at the doorway. That is when I saw Mr. Rez.

* * * * *

66

RUTH SMITH

was called as a witness by the Government, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * * *

Q. Where do you live? A. 356 McLean Avenue, Southwest.

Q. And where is that, your residence, in relation to the residence of Hillary Johnson? A. Right across the street, directly in front.

* * * * *

67 Q. And did you know a person by the name of Dandridge? A. Yes, sir.

Q. His other name is Rez Dandridge? A. We call him Rez, but his name is Clarence.

* * * * *

68 Q. Do you know if Clarence Dandridge was living in that area in 1956? A. Yes, sir, he was.

Q. Where was he living? A. He was living in the basement of 357.

* * * * *

Q. That was across the street from you? A. Yes, sir.

* * * * *

69 Q. When did you see Dandridge for the first time on July 8, 1956?

A. Well, I was sitting on my front porch and I saw him come out of his door directly in front of me, and Mrs. Washington, who was living there, sent him over across to my house because --

Q. All right. Now, what time was this, could you fix the time for us? A. I really don't know exactly, it was in the evening but I don't know exactly what hour it was.

Q. Was it twilight, or dark? A. It wasn't dark.

Q. Was it getting dark? A. It was daylight, it was twilight, it wasn't dark yet.

* * * * *

70 Q. What did he do after he got over there? A. He sit on my steps.

Q. How long did he sit on your steps? A. Oh, I guess approximately maybe about an hour.

Q. Could it have been less than an hour? A. It could have been less, but, you know, I didn't time him, but I know he was sitting there a good while talking to me.

Q. Did you notice anything about him, did you see anything about him, physically, about his face or any place else? A. I noticed a little scratch, I don't know which side it was now. I think it was this side (indicating), I am not sure. I know there was a little scratch, a little blood alongside his face.

Q. Is that all you noticed? A. That is all.

Q. And did you have any conversation with Dandridge? A. Yes, sir, I did.

71 Q. What did he say to you? A. Well, he told me that Robert had been fighting him over there, and that Miss Washington sent him over to my house to probably stop the fight. And he told me that Robert had hit him with a piano stool. That is what he told me.

Q. Then what did he say? A. Well, he said he was tired of being pushed around.

Q. Then what did he do, when he told you that? A. Well, he sit there, you know, a little longer, you know, talking about it, he was tired of being pushed around, he had to go home sometime. I said, "Well, just don't go over there, maybe Robert will be gone." He waited around and waited around. He said, "Well, I'll go down the street. Maybe he will be gone when I get back." So he went down the street, I don't know how far.

Q. Did he come back? A. He came back later on, about dusk, I think, or something like that.

Q. Did you see him coming back? A. I saw him when he came back.

72 Q. What did you see him do, after he came back? A. He came back up on the side of the street where they lived on, and he went in the house.

Q. Went in the house. And then what happened? A. Well, I couldn't see what had happened, but I did -- after he went in there a little while, you know, it wasn't long, I did hear a report from a pistol.

Q. How long would you say he had been in the house until you heard this report of a pistol? A. It wasn't, oh, no time, practically a minute or so, something like that.

Q. It could have been less? A. It could have been less, I didn't count the time.

Q. It wasn't any more than a minute? A. I am quite sure it wasn't.

Q. After you heard this report, did you see anybody come out of the house? A. I saw Dandridge came out, and he hesitated on the front step of their house a few minutes, and then he went down the street, and by that time everybody was around, and I don't know no more.

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CROSS-EXAMINATION

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75 Q. And on the day of the shooting, when did you see "Boogie" Taylor?

A. I saw "Boogie" Taylor --

Q. The first time. A. -- after Dandridge came over on my porch. "Boogie" Taylor was standing at the door, in the door of the home where Dandridge lived, and I called him and asked him if he would take Robert home so Rez could come home. And he said, "Let him come on back, I am
76 not going to let them fight." That is what he said. And that is the last time I saw him, he went back in the house.

Q. And Mr. Dandridge, this man, was sitting on your porch at that time?

A. That is right.

* * * * *

79 Q. Did he tell you, or was it discussed on your porch, how many fights

80 there had been that Sunday between Rez and Robert Allen? A. A couple, I think.

Q. He told you a couple? A. Yes, sir.

Q. And had you heard any of those fights, or seen any of those fights from your porch? A. I didn't see it because I couldn't see it, but I did hear them scuffling there, but I didn't see it, I couldn't see through the house.

Q. When did you hear the first thing that appeared to be a scuffle from that house, what time of day? A. That was in the evening before he came over to my porch.

Q. And when was the second or the next one? A. I guess that must have been the last one, I guess, because he came over to my porch then and when he went back the next time, that is when the shooting occurred.

* * * * *

83 Q. Now, after you heard the shooting, you said you saw Mr. Dandridge come out on the porch? A. That is right.

* * * * *

86 **FREDERICK CONROY TAYLOR**

was called as a witness by the Government, and having been first duly sworn, was examined and testified as follows:

87 **DIRECT EXAMINATION**

* * * * *

88 Q. All right, you can be seated. Now, Mr. Taylor, directing your attention to July 8, 1956, about two years ago, did you have occasion to visit the residence, the Johnson residence? A. Yes, sir, I was there all the time.

* * * * *

Q. All right. Now, what time did you get there? A. I guess around about 12 or a little after.

Q. What did you do after you got there?

* * * * *

89 Q. Do you know how long you stayed there at the Johnson house? A. I stayed there until about, let's see, a little after all that accident were over.

Q. All the excitement? A. Yes, all the excitement.

Q. Was it dark at that time? A. Yes, just about dark.

Q. Did you happen to see anything that took place between Dandridge and Allen? A. Well, they was discussing there in the dining room, and I seen them scuffling and went there and stopped them.

* * * * *

Q. Do you remember what happened to Dandridge after that occurred?

91 A. No, sir, I do not remember what happened to him. I know he went on out the room, but where he went to, I don't know.

Q. He went out of the room? A. Yes, sir.

Q. And how about Robert Allen, where did he go? A. Went on back in the kitchen and started drinking again.

* * * * *

Q. Well, did there come a time when you ever saw Dandridge again?

A. Yes, when he came in that night.

92 Q. Well, what were you and the rest, Robert Allen and the rest of you doing when he came in? A. Well, Allen got up and started to the door, and just before he got to the door I seen him coming in the door, and I and him together stopped him.

Q. Then what happened? A. He walked up there and said something, but I disremember what he said.

Q. Then what happened? A. He up and shot him.

* * * * *

Q. No, just prior to the time he got shot, what was Robert Allen doing just prior to the time that he got shot? A. Standing up talking.

Q. Who was he talking to? A. Me.

Q. Talking to you? A. Yes, sir.

Q. Who was the person that shot him? A. That man over there.

Q. Where were you standing with Robert Allen when he was shot?

A. Right at the dining room door.

Q. That was in the center room? A. Yes, sir.

93 Q. And how far away would you say Dandridge was when he shot the

pistol? A. I guess about far as from here to that lady setting there, as far as I know, because I was pretty high at the time.

Q. What happened to Robert Allen after he was shot? A. He just fell to the floor, and then he laid there until the officers came and they called the ambulance to take him out.

Q. Did you ever see anything in Robert Allen's hands or any place around his body? A. No, sir, I did not.

Q. Were there any words spoken between Dandridge and Allen? A. Dandridge said something, but I disremember what he said. I don't know what he said.

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CROSS EXAMINATION

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96 Q. In the kitchen. Now, will you tell me, if you can, how many fights there were on that Sunday that Mr. Dandridge was involved in? A. I didn't see but the one.

Q. Which one was that? A. That was the one I stopped them.

Q. Where was that? A. In the dining room.

Q. In the dining room. And how long did that fight get going? A. Well, it didn't go very long because when I seen them I run there and stopped them.

Q. Was it five minutes, or 20 minutes? A. I don't think it that long, either one, five or 20.

Q. Did anything get knocked over, like a chair or victrola? A. I didn't see it, if it did.

Q. Was there any cussing? A. No, they wasn't making no noise at all.

97 Q. Who started it? A. I don't know that.

Q. What was the fight about? A. I do not know.

* * * * *

99 Q. Now, getting down to the time the shooting took place, what was the position, sitting down, bending over, or standing up, that Mr. Robert Allen -- A. We both were standing up.

* * * * *

100 Q. Did you see the gun before it went off? A. No, I didn't see it until it went off. I didn't know he had none.

Q. Did you see it after it went off? A. When he pulled his hands down, I seen it.

Q. How was he standing when the shot was fired, this man? A. All I know he was standing in front of him. I can't exactly tell you how he was standing.

Q. You say Robert Allen was standing, too? A. Yes, sir.

Q. The bullet went in his shoulder? A. Yes, sir.

* * * * *

104 Q. Now, did you see any razor that Allen had? A. No, I didn't.

Q. Did you see anything Allen had? A. He didn't have nothing in his hands.

Q. Did you see anything laying on the floor? A. No, sir.

105 Q. Did you see anybody pick up anything and carry anything away?
A. No, sir.

Q. Did you hear him, Allen, say anything before he got shot? A. Oh, we was talking, and he said, "I am going home now." We started out the house, started to the door when he come in the door, and then we stopped.

Q. And then what happened? A. He just shot him.

Q. Was there any conversation at all between anybody in that premises, in that room, about a ballgame? A. Oh, yes, we were talking about ballgames.

Q. All right. Was Dandridge in that talk about the ballgame? A. No, he wasn't in there.

* * * * *

111

JOHN W. BROWN

was called as a witness by the Government, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * * *

Q. Directing your attention to July 8, 1956, were you assigned to the

Metropolitan Police Department? A. I was.

* * * * *

113 Q. Where did you find the defendant Dandridge? A. Approximately a block and a half away from the scene of the shooting, at Third and N Streets, Southwest.

Q. What was he doing at the time you saw him? A. He was a passenger in another vehicle.

Q. What was the vehicle doing? A. The vehicle was moving north on Third Street, Southwest, at N.

Q. Did you have occasion to have the defendant Dandridge get out of the automobile? A. Yes, we stopped the car.

Q. Did you search him? A. I did.

114 Q. What did you find on Defendant Dandridge? A. At the time I removed a pistol from his hip pocket. I can't recall now whether it was the right or left pocket.

* * * * *

Q. What was the condition of the chamber at the time you took it from him? A. It was a fully-loaded gun with one spent cartridge.

* * * * *

119 August 14, 1958

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122 DIRECT EXAMINATION - resumed

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Q. And about what time did you make your arrest? A. It was in the evening; I can't recall the time.

Q. Was it around 10 o'clock, would you say? A. It was well after dark; that is the best of my recollection.

Q. Now, after you arrested him you took a revolver off Dandridge?
A. That is right.

Q. Where did you proceed to take Clarence Dandridge? A. Put him in the scout car and took him to the Fourth Precinct.

123 Q. How long did it take you to get to the Fourth Precinct from where you had arrested Dandridge? A. I suppose a matter of two minutes, perhaps.

Q. And after you got there, did you have any discussion with Dandridge of what had occurred at McLean Avenue? A. I did.

Q. Was that immediately after you got to the Precinct? A. That is right.

THE COURT: Before or after he was booked? Was he booked?

THE WITNESS: No, sir, he hadn't been booked yet.

THE COURT: Had not been booked.

BY MR. McINTYRE:

Q. You did ask him some questions? A. Yes, sir.

Q. What did you ask him? A. I asked him directly whether or not he had done the shooting.

Q. What did he say to that? A. He admitted that he had.

Q. Did he give you any reason why he had shot? A. I asked him why he had done it, if he had done it and why he had done it. He said that he did, that he would do it again, he was tired of the complainant having beat up on him on prior occasions, but he said there was no altercation taking place at the time the shooting took place.

124 THE COURT: He said that there was no altercation at the time of the shooting?

THE WITNESS: He didn't use those words, Your Honor, but he said no fight was taking place then.

BY MR. McINTYRE:

Q. Did he mention Allen having a weapon, or anything like that? A. He made no mention of any weapon.

* * * * *

127 MR. PAGE: I object to the testimony.

THE COURT: Objection is overruled. Call in the jury.

* * * * *

128

JOHN W. BROWN

was recalled as a witness by the Government, and having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

* * * * *

Q. Where did you take Dandridge after you had taken him into your custody? A. To the Fourth Precinct.

Q. And how long was that after you had actually taken him out of the automobile with this loaded revolver? A. Just a couple minutes.

* * * * *

129 Q. Where did you talk to him about the shooting? A. In the Squad Room in the Precinct.

Q. And did he say anything about the shooting? A. Yes, sir.

Q. What did he say? A. I asked him if he had done it, and he replied that he had. I asked him --

Q. Did he say why he had shot Allen? A. He said that he did it, he would do it again, and the reason he gave was that he was tired of being beaten up on by the complainant on some prior occasion to this.

Q. Did he say there was an altercation, or anything like that, occurring at the time that he shot Allen? A. He did not.

Q. Did he say that Allen had any kind of a weapon or anything else? A. No, sir, there was no mention made of any weapon of any sort.

* * * * *

130

CROSS-EXAMINATION

BY MR. PAGE:

Q. Officer Brown, was Dandridge hostile when you arrested him? A. No, sir.

Q. When you arrested him, did he not say, "I am the man you are looking for?" A. No, sir.

Q. Do you remember what he said to you? A. He did make mention of the fact that he was on his way to the Precinct to give himself up. Whether or not that is true, I don't know.

Q. And you had an associate officer in the scout car that you were driving that night? A. That is right, sir.

Q. Were you the first officer to get to the defendant Dandridge? A. Yes, sir, I was. I removed him from the car.

* * * * *

131 Q. Where did you take the pistol off of him? A. Right outside of the automobile that he was riding in.

Q. Where did you find the pistol? A. In one of his right rear pockets; I don't recall which one it was at this time.

* * * * *

132 Q. Now, did he tell you about having been beat by the complainant that day? A. I can't recall. He did mention having prior altercations with the complainant, but I can't remember whether he said it was that day or whether it was about the first, or not.

Q. Now, did you see any marks about his face, or any blood about his face or body? A. No, sir.

Q. Did you see any swollen eyes or nose? A. No, sir.

Q. Was he sober or was he drunk? A. The best of my recollection, he was sober.

Q. Do you know whether he had been drinking at all? A. I cannot recall.

Q. Was he headed toward the station to give himself up at the time you apprehended him? A. He was headed north on Third Street, and the station is north of where the shooting took place.

133 Q. So he was headed toward the station? A. Yes, sir.

* * * * *

135 Q. Did you ask anybody at the scene, when you first went in there, before you apprehended the defendant Dandridge, what it was all about? A. No, sir.

Q. You went in, and then you went out to locate him, is that it? A. I went in, saw the man shot on the floor. I received information who had done it and where he had gone, and I pursued him.

Q. And how long did it take you to find him? A. Not long at all. I don't

know the elapsed time; certainly not more than a couple minutes.

Q. You just went down to the corner and around the corner and there he was, is that it? A. That is right.

* * * * *

136

THOMAS V. SLOMINSKI

was called as a witness by the Government, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MCINTYRE:

Q. Give your name, please. A. Captain Thomas V. Slominski, assigned to Administrative Headquarters, Police Department, as the Court Liaison Officer.

Q. Now, Captain, did you have occasion to search the Metropolitan Police
137 Department records pertaining to one Clarence B. Dandridge, who resided at 357 McLean Avenue, S. W., to determine whether or not one Clarence B. Dandridge did have a license to carry a revolver on July 8, 1956? A. I have.

Q. And what did your search of the records disclose? A. It disclosed that Clarence B. Dandridge has never had a license to carry a pistol in the District of Columbia.

* * * * *

CROSS-EXAMINATION

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Q. Captain, when did you search the records to determine whether Mr. Clarence B. Dandridge did or did not have a license to carry a gun? A. I don't recall the exact date. The first date was when the case was in Municipal Court, I searched the records at that time, and my least search was yes-
138 terday morning.

Q. Captain, did you physically search the records? A. I searched all the records myself, yes, sir.

* * * * *

139 Q. You go through all of the A's through the Z's of every card index?

A. For your information -- I don't know whether you want this brought out, but since you opened it -- there are only fourteen persons in the District of Columbia current today, so it is not much of a job to go through fourteen cards.

THE COURT: Would that be so as of July 1956?

THE WITNESS: I couldn't exactly say. The average, Your Honor, runs, I would say, between fourteen and twenty.

THE COURT: That is the highest?

140 THE WITNESS: Yes, sir.

BY MR. PACE:

Q. That is the number of cards that you physically examine? A. Yes, sir.

* * * * *

MR. McINTYRE: That concludes the Government's case in chief, Your Honor.

THE COURT: Very well.

MR. PACE: May we approach the bench?

(At the bench:)

MR. PACE: May it please the Court, I move for a verdict of acquittal on count one of this indictment at this time. Count one is carrying a gun on his person without a license. There is an exception to that, may it please the Court, in the very same status that is in this indictment, which is §204, except
141 in a person's home. I submit that the Government has proved that this gun was in this man's home at the time of the shooting and that the statute itself does not require that he should have a license in his home.

THE COURT: What do you say?

MR. McINTYRE: Your Honor, that is an issue for the jury. This man was out in the street just seconds before the shooting occurred, across the street; remember, he came back and went in the house and she immediately heard the shooting. Not only that, we take the position that that is not his home; that the basement is where he lived and not there in the other portion of the house. And then not only that, but he went out after the shooting, out on the street, with a loaded gun. It is an issue for the jury.

THE COURT: I will deny the motion.

* * * * *

MR. PACE: May it please the Court, I again renew my motion to dismiss both counts of the indictment, or each count individually, on the ground that we have not had a speedy trial.

142 THE COURT: The motion is denied.

* * * * *

CLARENCE B. DANDRIDGE

the defendant, called as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PACE:

Q. Will you state your name? A. Clarence B. Dandridge.

Q. And your address? A. 357 McLean Avenue, S. W.

Q. And that was your address on July 8, 1956? A. Yes, sir.

Q. And where have you been since that time? A. I have been incarcerated ever since.

Q. And why were you incarcerated? A. On a charge of assault with a dangerous weapon.

* * * * *

143 Q. Now, will you tell the Judge and jury whether you knew Robert Allen, the complaining witness in this case? A. Yes, sir.

Q. How long have you known him? A. I'd say about a couple years, I don't think much longer than that.

Q. And did you see him the day before the shooting? A. Yes, sir.

Q. And when did you first see him the day before the shooting? A. Well, I seen him that night about between twelve and twelve-fifteen, which the night before the shooting, that would have been Saturday night.

Q. Saturday. When did you see him Saturday the first time? A. That was about 11:30.

Q. Day or night time? A. At night time.

Q. Where were you when you saw him Saturday? A. 357 McLean Avenue, S. W.

Q. What portion of that building? A. He was in the middle room of 357, where I live.

144 Q. Was that on the first floor or was that somewhere else? A. It was on the first floor.

Q. Where do you live in 357 McLean Avenue? A. In the basement, leading to the middle room on 357 McLean Avenue.

* * * * *

Q. Will you tell the Judge and jury what you and Robert Allen did on Saturday when you saw him, if anything? A. Well, we didn't do anything. When I come in the house, he was in there.

* * * * *

145 I comes in the house and I stops by the piano, looking at the television. Robert Allen come from the middle room and said that he had something to tell me. I said, "Just a minute, I am looking at the story."

* * * * *

So he said, "Come on now," and he caught hold of me by the arm. I said, "Just a second." When I didn't get up, I don't know if he hit me with his right hand or left hand, hit me across the bridge of my nose.

Q. What day is this? A. That was Saturday night.

Q. All right. Tell the Judge and jury what else happened. A. Boogie Taylor, he comes in and stops it; he was there at the time. My nose was bleeding and I told my wife, "Come on, let's go downstairs and go to bed." That was Saturday night. So --

* * * * *

147 Q. The next day, Sunday, the day of the shooting, when did you first see Robert Allen?

* * * * *

A. In the kitchen, Mr. John Jones, Boogie Taylor and Linton was in the kitchen, drinking. They offered me a drink. I told them I didn't care for any.

Q. Was Allen there? A. No, sir, Allen wasn't there then. You can go

out the back door and go out on the next street to the store; I goes out and around to the N Street store. The store was closed because it was too early. And when I comes back from the store, comes around the front way, on the front step was Boogie Taylor, Robert Allen, Bill Linton, and Mr. Jones. They was out on the front steps.

Q. What time of day was this, on Sunday? A. Well, that had to be before eight o'clock,

* * * * *

148 Q. Did you or Allen say anything that morning at eight o'clock? A. No, sir, I didn't say anything to him at all.

* * * * *

Q. Now, what did you do and what happened? A. Well, Robert Allen told me he had something to tell me. So didn't pay much attention to it last night, (sic) because I just thought it was something he was just drinking, that is all. So we goes on through the house and he was in front and goes to the back porch. We gets out on the back porch and I ask him what he wants and it looked like his eyes were water and he started jumping on me. I was trying to fight and get back up in the house. He knocked me up against the wall there and hit me and hurt my back.

* * * * *

A. He knocked me up against the wall and hurt my back and I was trying to get away from him. Just about that time, Boogie Taylor, he comes in and stops it.

Q. Comes in? A. From the front and stops Allen from fighting me. I comes in and goes downstairs and lay down, because my back was hurting from him hitting me. Then about twelve, or a little after twelve o'clock, I heard
149 someone coming down the steps. My wife said, "He is asleep, don't bother him." Then, my bed is behind the steps, you come down the steps this way and the bed is behind the steps, he at front and my wife behind.

* * * * *

Q. And was anyone with Robert Allen? A. Just Robert Allen and my wife.

Q. All right. What happened? A. Well, I thought he come down then, after he done fought me before, to start some more fighting. So I gets up out the bed and he set on the steps. Underneath the mattress, I had a pistol. I put on my pants, this old pair of blue pants, didn't have no back pocket in it and the front pocket was all tore out, and a slip-over shirt to put over my head, and put the pistol in my waist there. And he is still sitting on the steps and I said, "How you feeling, Robert?" He said, "All right," and he is shaking some money in his pocket, so I thought he was going to block me from coming up the steps. I said, "Lend me two quarters." He said, "O.K., when you going to pay me?" I said, "Next Friday," and he give me two quarters.

* * * * *

150 Q. Where was Robert Allen? A. I left him coming up the steps behind me. He didn't come right that minute, I guess in about a minute he come up the steps; my wife come on up and he came on up.

So I goes out on the front and they must have drink their drinks then; it is still the same Robert Allen, Bill Linton, Mr. John Jones out on the steps. He approached me with the same question as before, he said he had something to tell me. I said, "No, sir, I am not going back to hear no more you telling me. You hit me in the eye and busted my nose. I am not going back out there no more." Taylor said, "I will go out there with you." I said, "O.K., if you will go out there with me, I will go out and see what he has to say." Robert Allen --

Q. Go out where? A. On the back porch.

Q. The back porch a second time? A. But we didn't reach the back porch. Robert Allen in front, Boogie Taylor in the middle, and I am behind; when we reach the middle room, Robert Allen pushed Boogie Taylor out the way and he struck me with something. It couldn't have been his fist, because, I don't know, it must have been a stool of some kind, or something, and knocked me up against the table and I fell from the table to the sideboard there. I

151 bounced off the sideboard, comes on out and goes across the street to Mrs. Ruth Smith's house and sits on the step.

Q. How long did you sit on the step? A. I would say more than an hour and a half, anyway.

* * * * *

Q. All right. How long did you sit on the steps over at Mrs. Smith's? What did you do after you left her steps? A. Well, I walks down the street. I didn't see him come out. I figured they'd go out the back way, because if they go out the back way it is closer. But before I leave the steps, Mrs. Ruth Smith -- Taylor comes to the door and Mrs. Ruth Smith called him and asked him to take Robert Allen home, "so he wouldn't be fighting Dandridge
152 no more." He said, "I will see that I take him home and he won't bother him any more."

* * * * *

Q. And will you describe to the Judge and they jury what kind of living quarters you and your wife had in the basement, how many rooms? A. We have the whole basement, no partition off, it is just the whole basement.

Q. In that whole basement, is there an icebox? A. No, sir.

153 Q. Is there any cooking stove of any kind, temporary or permanent?
A. No, sir, no cooking utensils at all.

Q. Is there any sink to wash dishes with? A. Nothing to wash your face or nothing.

Q. Any bathroom? A. No, sir, you had to come upstairs and go out to the back to the bath.

Q. And so you and your wife cooked in the same kitchen that Mrs. Johnson and Mrs. Washington cooked in? A. Yes, sir.

Q. You shared the kitchen together? A. Yes, sir.

Q. You shared the bathroom together? A. Yes, sir.

Q. And you didn't have any dining room, you ate in the kitchen, most of your meals? A. Yes, sir.

* * * * *

154 Q. Now, where did you go after you left Mrs. Smith's porch? A. I walked down on the same side of the street as Mrs. Smith's.

Q. Where did you go? A. I crossed the street, comes on up to where I live.

Q. Where did you go then? A. And I come into the house.

* * * * *

Q. Tell the Judge first, where did you go, which room? A. To the front room.

* * * * *

155 Q. And at that time, had you seen either Boogie Taylor or Robert Allen?
A. I thought they had gone home, I didn't see them.

* * * * *

Q. Then when did you next see them and which one did you see first?

A. When I started to pass Mr. Jones, this curtain is about as wide on that side, pushed up against the frame of the door, and on this side pushed up against the frame of the door, and the middle is open like that (indicating), you just can get through. When I started through the door, Mr. Jones had to move because it is so small, and he told me to look out. When he say, "Look out," I seen Robert Allen heading to me. He must have stumbled or something, because he was in a crouched position with something in his hand shining and I knocked
156 back and pulled this pistol out and shot him. That is how he come to be shot in the shoulder.

* * * * *

161 Q. Did you say anything to anyone after the shooting? A. Only Miss Julia Washington.

162 Q. What did you tell Mrs. Julia Washington? A. I told her, "that would be all right, Miss Julia, I am going out and give myself up to the police."

Q. Were you the first one out of the house? A. Yes, sir.

Q. Why did you shoot that pistol? A. Well, he had beaten me three or four times that day and he was rushing me then, which I know he carries a razor all the time, not sometimes, he carries it like a person would carry a pocket knife; all the time, not sometime but all the time.

Q. Why did you shoot the pistol that day? A. Because he was starting

to me with something shining in his hand and I couldn't determine what it was; because it was so quick and I know he'd been beating me three times before without cause and I didn't know what he was fighting me about; the only protection I had, he must have been trying to do me bodily harm or trying to kill me, one or the other, or else he wouldn't be starting at me, waiting for me when I come home at night.

* * * * *

163 Q. After the shooting, where did you go? A. I walked to the front door and I decided which way is the best way to go to Headquarters to give myself up.

* * * * *

164 Q. No, just tell the Judge and jury where you went. A. I went down to N Street, McLean Avenue is between N and O, and when you goes down to N -- to 3d Street, you can't go no further because it runs on through, you have to turn right or left. So I turns to my left, walks up on the corner where this boy lives, but his car wasn't there. So I started back to the house and said, "Well, I will go back to the house and wait until the police come." On my way back to the house, across the street I seen a boy by the name of Johnnie. I goes over and asks Johnnie, "Will you take me up to No. 4 Headquarters? I am going to give myself up. I am going to take this gun along with me."

* * * * *

165 The scout car comes around the corner, drives up beside our car and almost past it and I reached over the driver's side and hollered, "Officer, I am the man you are looking for. I am on my way to No. 4 Headquarters now to give myself up and I have the gun with me." He said, "O.K., get out the car and bring the gun with you." I gets out the car, the car is a little bit in front of the alley, comes around the back with the pistol in my hand. The officer is standing at the door, gives the officer the gun, he told me to get in the car, I got in the car and he carried me to No. 4 Headquarters.

* * * * *

166 Q. And when you got in the Police Station, what did you tell -- how many officers did you see in the Police Station when you first got there? A. There was quite a few in there, but as you entered, at the desk there, they stop there a few minutes and then they carried me on in to another little room in there.

Q. How many officers were in that room? A. I couldn't exactly recall right now, at the time.

Q. Did you see Officer Brown who testified here this morning and yesterday, there? A. Yes, I remember him very well, but I don't remember the other officer.

Q. What did you tell the officer at that time? A. I told him I had shot the fellow because he had been beating me up and that night he had started to me with a razor, and he could see my face, all black eyes and things, my mouth was swollen, and I give him that statement and told him he was trying
167 to cut me with a razor.

* * * * *

168 CROSS-EXAMINATION

* * * * *

Q. Clarence Dandridge, you told the police officer, when you got to the precinct, that Allen had a razor in his hand, is that correct? A. During the talking, I told him that.

Q. He had a razor in his hand and was coming at you, is that correct? A. I told him something shiny, I didn't make it definite a razor.

Q. Was it a razor? A. It was something sharp, I mean shiny instrument.

Q. Was it sharp? A. I don't know if it was sharp, a shiny instrument in his hand.

* * * * *

169 Q. Now, Clarence Dandridge, you did tell him that you had shot Allen, didn't you? A. Yes, sir.

* * * * *

170 Q. No, I mean just when you shot him, just prior to that, did he hit you? A. Well, he was starting to me with this instrument, whatever he had in his

hand, he was up on me, that is when I shot him.

* * * * *

171 Q. Did he hit you at that time? A. I got back, he couldn't hit me.

Q. He couldn't hit you? A. I mean he would have hit me with whatever he had in his hand.

Q. But he didn't hit you, did he? A. He couldn't, I was getting back off from him to keep from whatever he had in his hand to use on me.

* * * * *

173 Q. I am directing your attention, Clarence Dandridge, to November 2,
1956, when you had occasion to appear in District Court pertaining to this
174 case and at that time you were giving testimony and you stated --

* * * * *

THE COURT: Just limit it to a statement.

Let me admonish the jury now, that the question that is being asked is solely for the purpose of impeaching the credibility of this witness and for no other purpose. It is not being received for the purpose of establishing what transpired on the day in question, but is limited solely to the purpose of impeachment.

You may proceed, Mr. McIntyre.

MR. PACE: Would you also instruct the jury that this is not evidence?

THE COURT: And it is not evidence, the question is merely did this man say something.

BY MR. MCINTYRE:

Q. (Reading:)

"THE COURT: Then you fired your gun at him, didn't you?

"THE DEFENDANT: -- who was you, Clarence Dandridge --

175 "Yes, when he started to me, yes.

"THE COURT: What did he beat you with?

"THE DEFENDANT: I don't know. I had a fractured nose and two black eyes.

"THE COURT: With his fist?

"THE DEFENDANT: I guess so. I was trying to get out of his way each time, three separate times."

Now, do you remember giving that to the Court and was it true at the time when you related that to the Court?

MR. PACE: May it please the Court, I object to the form of this question, when he asks is it true.

THE COURT: The objection is overruled.

BY MR. MC INTYRE:

Q. Did you give that testimony? A. I couldn't say because I was sick at the time and the record will show that I said I was sick. The doctor's record will show that I was in the hospital, less than twenty-four hours taken out of my cell on a stretcher. I got the record from the hospital in my bag there, I was treated with penicillin and ice pack for three days.

* * * * *

178 Q. This is the first time that you had had any trouble with Allen, is that not right, on this July 8? A. We haven't never had a cross word before then, never even cussed at each other, haven't cussed at each other as it is now, so I don't even know what he is fighting about, that is what I'd like to know.

* * * * *

180 Q. And you sat on Mrs. Smith's stoop, didn't you? A. That's right.

Q. And you talked to her? A. Yes, sir.

Q. And at that time you had a loaded gun on your person, didn't you?

A. Yes, sir.

Q. Fully loaded? A. Yes, sir.

Q. And you don't have a license, do you, to carry that? A. No, sir.

Q. And you have never had a license? A. No, sir.

* * * * *

185

ELIZABETH JOHNSON

called as a witness by the defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * * *

186 Q. State your name and address, please. A. Elizabeth Johnson, 357 McLean Avenue, S. W.

Q. And where were you living in July, July 8, 1956? A. Same address.

Q. And on July 8, 1956, who was the landlady of that house? A. Julia Washington.

Q. What relation is she to you? A. My mother, foster mother.

Q. And where is she now? A. She is deceased.

Q. When did she die? A. December 2, 1956.

Q. And where was she working July 8, 1956? A. Freedmen's Hospital.

Q. And who else was living in that house on July 8, 1956? A. Myself, my three kids, Clarence Dandridge, Equilla Dandridge, John Jones, and William Linton.

Q. Where is John Jones now? A. He is at Augusta, Georgia, I think.

Q. And when did he leave your house? A. I don't know, to be exact. I wouldn't say it was exactly a year, but it was close to a year later that he left.

Q. And have you seen him back in Washington at any time since? A.

187 No, I haven't, nor heard from him.

Q. Do you know where Bill Linton is? A. No, I don't.

Q. And when did he leave your house, approximately? A. Well, I don't know approximately, I know it was last year sometime.

Q. And do you know where he is now? A. No, I don't.

Q. Have you heard from him? A. No, I haven't.

* * * * *

193 EQUILLA DANDRIDGE

* * * * *

196 CROSS EXAMINATION

* * * * *

200 THE COURT: What did you say that Mr. Dandridge said, just at the time he fired the shot? What did he say?

THE WITNESS: He just told him, "You fought me before, but you won't

fight me any more." That's all.

* * * * *

206 THE COURT: May I speak to counsel for a minute?

(At the bench:)

THE COURT: Do you have any instructions that you want to request the Court to give?

MR. PACE: Yes, I want instructions about carrying a dangerous weapon. Has the government rested its case?

MR. McINTYRE: Yes.

MR. PACE: Then at this time I renew my motion that we were denied a speedy trial and that we were jeopardized in that we had two eye witnesses that were subpoenaed and did appear -- that did appear two years ago, and one eye witness is dead and the other eye witness is gone. I say I renew it,
207 there has been a rule on it.

THE COURT: I understand, but I think I would like to state what my understanding is: The defendant was indicted September, 1956, and was brought on for trial on October 16, 1956, at which time he entered a plea of guilty to count one of the indictment. Thereafter, on November 2, 1956, there was a motion for leave to withdraw his plea, which was argued and denied, following which he was sentenced on December 7, 1956.

Now, there have been appellate procedures since then, from the ruling of the Court denying him leave to change his plea. Those proceedings, as I understand it, include the hearing before the Court of Appeals, and the Court of Appeals affirmed the judgment of this Court on July 8, 1957. Petition was then filed in the Supreme Court and the Supreme Court on April 7, 1958, reversed.

MR. McINTYRE: That is right.

THE COURT: So that the time when he was originally brought on for trial in 1956 until April 7, 1958, was consumed in these appellate proceedings. How can you say he was denied a speedy trial?

MR. PACE: That plus some facts that are not entirely in the record there,

I claim denial; one is that he did plead guilty upon October 16 and on October 21, the record has in the file a letter dated October 21, which says that he wishes to change his plea because he was sick. And then after October 21, the Court on November 2, heard that motion; but it was made between
208 the 16th and 21st of October.

Then also the Supreme Court says that the Solicitor General confesses error. Now, if the Supreme Court accepts it, and they did, the Government confessing error, then that was an arbitrary ruling sometime after October 21. Now, if he were injured and jeopardized, then he was entitled to a dismissal.

I have testimony in this Court in this cause of our two eye witnesses, unbiased -- we don't have any unbiased witnesses at all and one of them is dead, that was here before, and the other one is beyond the jurisdiction, the other one was drunk and he is beyond the jurisdiction.

THE COURT: I think your record is pretty clear -- not pretty clear, is very clear and I will deny your motion.

MR. PACE: Then I have two motions, one a dismissal on the indictment on count one based upon all of the evidence --

THE COURT: That is denied.

MR. PACE: I want a verdict of acquittal on count two, based upon all of the evidence.

THE COURT: That is denied. Now, do you have any special instructions you want me to give the jury?

MR. PACE: Yes, I want to raise the point of carrying a deadly weapon, and, as the Court of Appeals in the Wilson case --

209 THE COURT: What is the case?

MR. PACE: Wilson v. United States, 91 U. S. Appeals 135. That was a case where the defendant Wilson was indicted for four counts, three of them assaults and one with a dangerous weapon. It went to trial, the jury found the man not guilty of the three assaults. The facts were that he drove up in his car, sat on the fender, three people attacked him from the house; he got off the fender of the car, reached in his car, tipped over the front

seat, pulled out a gun and shot them. And the Court said that if he carried a gun without a permit, he was guilty. The Court of Appeals reversed and said that that is not the charge to give to the jury.

THE COURT: I will give a correct charge on that.

MR. PACE: And in that case, there, it says, the instruction was erroneous as in practical effect it told the jury to find that Wilson was guilty under the fourth count. The exigencies of the occasion justified Wilson in obtaining a weapon, using it in his self-defense, so that the fact that he had a pistol in his hand, as he fired it, should not have been the basis for an instruction or conviction.

THE COURT: Do you have anything else?

MR. PACE: No.

* * * * *

211 (At the bench:)

MR. PACE: May it please the Court, I think the Court of Appeals said that if the defendant or his counsel wishes to object to anything the prosecutor said during his argument, now is the time to do it.

THE COURT: Very well.

MR. PACE: Therefore, I make a motion for a mistrial based upon the argument of the prosecutor on the grounds, one, that he referred in his argument to a murder or an "almost murder"; also on the ground that he referred to another crime of intent to kill, which defendant is not charged with; he referred to another crime of maim of this complaining witness, of which he is not charged with, he referred specifically, maim being crippled and paralyzed, and I submit that is ground for a mistrial.

THE COURT: Do you want to say anything?

MR. McINTYRE: I think all that, from what the prosecutor's remarks pertained to, was in the evidence and was proper argument.

THE COURT: I think it was proper argument. Of course, the evidence is that the man still is crippled and slightly paralyzed. As I remember your

argument, the other was that it might have been something else.

212 MR. MCINTYRE: That is right, it could have been that.

THE COURT: I will make it clear to the jury that the only offense he is being tried on is the offense in the indictment. I will deny the motion.

(End of bench conference.)

COURT'S CHARGE TO THE JURY

THE COURT: Members of the Jury, as you know, you having heard the evidence in this case over the past two days, it will soon become your duty to retire to the jury room and to deliberate on that evidence and to reach a determination as to the guilt or innocence of the defendant of the two offenses with which he is charged.

Before you do that, it is my obligation, or the obligation of the Trial Judge, in each case to outline to the jury the principles which should govern you in the performance of your duty as jurors.

During the course of the trial, I had occasion to make certain rulings on questions of law and now we reach the stage where I must charge you on the law in this case and which you, as members of the jury, are expected to follow.

I start now by saying that of course you are the sole judges of the issues of fact in this case. You, and you alone, determine the question which I am going to submit to you; but you do that not arbitrarily or capriciously but
213 objectively, basing your verdict solely on the evidence that you heard here yesterday and the day before yesterday, and such inferences as are reasonably deducible from that evidence. That is your responsibility.

In exercising that responsibility, it is your duty to weigh the evidence objectively, without any considerations of bias or prejudice or sympathy, for anyone connected with this case.

The sole question here is, what are the facts, what happened on this day that we are talking about, and that is for you to decide. You base that decision, as I said and I repeat, solely on the evidence that you heard and the reasonable inferences, and not upon any speculations or conjectures that one might be inclined to indulge in.

In this case, the Grand Jury on July 7, 1958, returned an indictment in two counts; the first count charging the defendant with carrying a dangerous weapon, and the second count charging him with assault with a dangerous weapon.

I will come back to a more detailed discussion of the elements of those two alleged offenses, but I say to you now that the fact that the Grand Jury indicted this defendant is not evidence against him and there should be no inference drawn by you from the fact that he has been indicted. This case is on trial before you on the evidence you heard here and nothing else. The indictment is the machinery we have whereby a defendant is informed of the charge
214 against him and whereby the case is brought to trial. To that indictment, he entered a plea of not guilty and that creates the issue of fact which you members of the jury must determine.

This defendant, as defendants in all criminal cases, is presumed to be innocent of the offense with which he is charged, and that presumption of innocence remains with him throughout the course of the trial until overcome by evidence establishing his guilt beyond a reasonable doubt. There is no obligation on the defendant to prove his innocence. The burden is on the Government to prove his guilt beyond a reasonable doubt.

Now, "beyond a reasonable doubt" means beyond a doubt based on reason, beyond a doubt for which you can assign yourselves a reason. It is not a doubt based upon some whimsical speculation or conjecture. The law does not require the Government to prove the guilt of the defendant beyond any doubt, nor is the Government required to prove the guilt of the defendant to an absolute certainty or, as we sometimes say, to a mathematical certainty. The Government must prove the guilt of the defendant to a moral certainty.

If, after a fair comparison of all of the evidence, you cannot say that you are satisfied of the guilt of the defendant, then you have a reasonable doubt and should find him not guilty. On the other hand, if, after a fair comparison of all of the evidence, you can say that you have an abiding conviction of the guilt of the defendant, such a conviction as you would be willing
215

to rely upon in determining the more weighty and important affairs of your own everyday lives, then you do not have a reasonable doubt and should find him guilty.

Now, you are the sole judges, as I said a moment ago, of the issues of fact and you, therefore, necessarily are the sole judges of the credibility of the witnesses who testified. You heard them yesterday and the day before yesterday. In testing the credibility of the witnesses, in weighing their evidence, you have a right to consider their demeanor upon the witness stand, their manner of testifying, their apparent candor and fairness or lack of it; the interest which each may have in the result of the trial of the case, if any; their bias and prejudice for or against the defendant, if any is shown; their opportunity of knowing the facts and circumstances to which they have testified; and it is your duty, from all the facts and circumstances, to give the proper weight to the testimony of each and every witness who has testified before you.

I said a moment ago that one of the elements which you take into consideration is the interest of the witness, in testing his credibility; manifestly, the defendant has an interest in the outcome of this case and in considering
 216 his testimony, in weighing its force, you may do so in the light of that interest as well as in the light which may be shed by all the other evidence in the case.

Also, on the subject of credibility, there has been testimony in this case as to a criminal record of the defendant and a criminal record of one of the witnesses for the prosecution. The fact that the defendant has a criminal record has no bearing on the question of guilt or innocence of the charge on which he is being tried. The law, however, admits the criminal record as to any person who takes the witness stand, solely for the purpose of assisting the jury in determining whether or not to believe the witness. Any fact that may tend to show that a witness may not be a truth-telling individual is admissible in respect to such witness, whether the witness is the defendant or anyone else.

Now, with those general rules to guide you in weighing the evidence and in reaching your verdict, I want to discuss with you the two counts of the indictment, and I emphasize to you that the only charges against this defendant and the only ones that are being tried and the only ones that you are to pass upon, are the charges contained in this indictment which I am going to read to you.

The first count of the indictment alleges: On or about July 8, 1956, within the District of Columbia, Clarence B. Dandridge carried, openly and
 217 concealed, on or about his person, a dangerous weapon, that is, a pistol, without a license having been issued as provided by law. That is the charge.

Now, that is a charge brought under a provision of our Code which provides that: "No person shall within the District of Columbia carry either openly or concealed on or about his person, except in his dwelling house or place of business or on other land possessed by him, a pistol, without a license therefor ..." That is the provision of the law.

In order to establish a violation of this statute under this first count of the indictment, the Government must prove beyond a reasonable doubt: (1) that the defendant carried a pistol on or about his person and that he did it at a place other than his dwelling or place of business or on some land possessed by him; and (2) that he had no license permitting him to carry the pistol. That is the issue which you must decide, based on the evidence which you heard here.

The second count of the indictment reads: On or about July 8, 1956, within the District of Columbia, Clarence B. Dandridge made an assault on Robert W. Allen with a dangerous weapon, that is, a pistol.

An assault is defined by law as an unlawful attempt or effort, with force and violence, to do injury to the person of another, coupled with the present apparent possibility of carrying out such an intent. If such an assault is
 218 carried out with a dangerous weapon, and of course a pistol is a dangerous weapon, in that event the crime is called an assault with a dangerous

weapon and that is the offense with which the defendant is charged.

As I understand the evidence, the defendant admits that he fired the shot which hit the complainant Robert W. Allen, but he says he did so in self-defense, and that causes me to charge you on the law of self-defense.

Self-defense is a law of necessity. Every human being has a right to defend himself against death or against serious bodily harm. Preservation is the first law of nature. In order to justify the use of firearms, such as a pistol, in self-defense, it must appear that the defendant was so circumscribed or so situated that he honestly believed, and that he had a reasonable ground for such belief, that he could not save himself from serious bodily harm except by using the weapon.

Self-defense from a danger means self-defense from an imminent danger of grave injury to his person or an injury which might be permanent in character or which might produce death. In order to be justified in defending himself by the use of a deadly weapon, it must appear that the defendant honestly believed, and that he had good reason to believe, that he was in imminent peril of his life or great bodily harm, and even in self-defense a person may
 219 not use any greater force than is necessary to defend himself. He may resort to the use of a firearm for self-defense only if he is in imminent peril of his life or in danger of great bodily harm.

Self-defense from danger means not a past danger or the danger of a future injury, but a present danger of great injury to his person that would maim him or that would be permanent in its character or might produce death.

If, as a result of all of the evidence or lack of evidence, a reasonable doubt has been engendered in your mind as to whether the defendant acted in self-defense, that doubt must be resolved in favor of the defendant, bearing in mind that the burden is upon the Government to establish that he did not act in self-defense.

Ladies and gentlemen of the jury, those are the issues which you must decide, based upon the evidence and, I repeat, based solely upon the evidence that

you heard here during the course of the trial.

You will take the case, your verdict as to each count -- and return a separate verdict on each count -- will be either guilty or not guilty.

Gentlemen, is there anything further?

MR. MCINTYRE: The Government is satisfied.

MR. PACE: May we approach the bench?

(At the bench:)

220 MR. PACE: May it please the Court, in the argument yesterday the prosecutor argued and told this jury that the defendant put in evidence -- the defendant put in evidence where that bullet entered and where it came out, and he could do it by hospital records but he didn't do it. Therefore, I think Your Honor should charge them further and state that it is not the duty of this defendant to put in any evidence.

THE COURT: I have already charged the jury there is no burden on the defendant to prove his innocence.

MR. PACE: May it please the Court, I think Your Honor should further charge them that the defendant is entitled to any doubt on any portion of the evidence. Your Honor did charge them as to the doubt on all of the evidence.

THE COURT: I think I should do that, I will do that.

MR. PACE: I have one other request and that is they set forth in *Wilson v. United States*, that I mentioned the other day, that the carrying of a gun itself without a license is not to be the exact crime, but if there was such an emergency that he was justified in having it and using it in his self-defense --

THE COURT: I don't think the evidence in this case would warrant such a charge. I will deny your request. And I also think I have adequately charged on the burden of proof, I won't emphasize that point.

(End of bench conference.)

* * * * *

221 (At 4:10 p.m., the jury was placed in the box and the following proceedings were had:)

THE COURT: Ladies and gentlemen of the jury, I have received from you

a note which I would like to read, so as to put it in the record: "Reached decision on count one, deadlocked on count number two. Request further instructions." Signed by your foreman.

Of course, I don't want to ask you how you are deadlocked and how you vote on that, it wouldn't be proper for me to do. I do want to say this to you, that I have had an awareness throughout the course of this trial that all of you
222 were following the evidence very closely and conscientiously performing your duties and I still feel the same way about it.

This case has been very fully tried to you, ladies and gentlemen of the jury, and I want to read to you an instruction which has been approved by the higher courts when a situation of this kind develops, for your very careful consideration, then I am going to ask you to return to the jury room in the light of what I say to you now.

While undoubtedly the verdict of the jury should represent the opinion of each individual juror, it by no means follows that opinions may not be changed by conference in the jury room. The very object of the jury system is to secure unanimity by comparison of views and by arguments of the other jurors and with a distrust of his own judgment, if he finds the large majority of the jury takes a different view of the case from that which he, himself, takes. No juror should go to the jury room with a blind determination that the verdict should represent his opinion of the case at that moment, or that he should close his ears to the arguments of the other jurors, who are equally as honest and intelligent as himself.

Accordingly, although the verdict must be the verdict of each individual juror and not a mere acquiescence in the conclusion of your fellow jurors, nevertheless you should examine the issue submitted with an open mind and with candor and with proper regard and deference to the opinions of each other.

223 It is your duty to decide the case, if you can conscientiously do so. You should listen to each other's arguments with a disposition to be convinced. If much the larger number of jurors are for conviction, a dissenting juror should consider whether his doubt is a reasonable one, when it made no impression

on the minds of so many other jurors, equally honest and equally intelligent as himself.

On the other hand, if the majority of the jurors are for acquittal, the minority ought to ask themselves whether they might not reasonably doubt the correctness of their judgment which was not concurred in by the majority.

Now, with those views, I would like you to go back to the jury room and deliberate further and endeavor to arrive at a verdict and consider the case in the light of these additional observations that I have given you.

Some jury, either you or some other jury, will have to decide this second count and I hope you will make an effort to reach a unanimous verdict. In that regard, let me say to you that if your problem is one of law, if I haven't adequately stated the law to you, if there is some problem in connection with a legal question that separates you, let me know, send me a note and I will do my best to clarify the law. As far as the facts are concerned, that is your responsibility. But I hope in the light of what I have said to you, you will retire to the jury room and continue your deliberations.

224 (At 4:15 p.m., the jury retired to deliberate further.)

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(At 4:40 p.m., the jury was placed in the box and the following proceedings were had:)

THE COURT: Ladies and gentlemen of the jury, I have your note in this language: "Request instructions as to the law governing justifiable self-defense in the instance of alleged assault with a dangerous weapon."

Let me say to you that the law of self-defense applies to any circumstance where self-defense is available as a defense. I am not sure that I am making that too clear, but it all depends on whether the person alleging self-defense is so circumscribed as to be warranted in doing what he did in defense of himself.

With that preface, let me read to you and I want to read very carefully, because it applies in all cases of an altercation between two people: Self-defense is a law of necessity. Every human being has a right to defend himself against death or against serious bodily harm. Preservation is the first

law of nature. But in order to justify the use of firearms in self-defense, it must appear that the defendant was so circumscribed or so situated that he honestly believed, and that he had a reasonable ground for such belief, that he could not save himself from serious bodily harm except by using the weapon.

225 Self-defense from a danger means self-defense from an imminent danger of grave injury to his person or an injury which would be permanent in character or which might produce death. In order to be justified in defending himself by the use of a deadly weapon, it must appear that the defendant honestly believed, and that he had good reason to believe, that he was in imminent peril of his life or of great bodily harm, and even in self-defense a person may not use any greater force than is necessary to defend himself. He may resort to the use of a firearm for self-defense only if he is in imminent peril of his life or in danger of great bodily harm.

Self-defense from danger means not a past danger or the danger of a future injury, but a present danger of great injury to his person that would maim him or that would be permanent in its character or might produce death.

I will continue the charge so that you will have it completely. If, as a result of all of the evidence or lack of evidence, a reasonable doubt has been engendered in your mind as to whether the defendant acted in self-defense, that doubt must be resolved in favor of the defendant, bearing in mind that the burden is upon the Government to establish that he did not act in self-defense.

226 I have tried to explain to you exactly what is meant by self-defense, because it would not apply merely where there was a use of an alleged dangerous weapon, but might be any circumstance as I have outlined it in this charge.

Gentlemen, are you satisfied?

MR. McINTYRE: The Government is satisfied.

MR. PACE: The defendant is satisfied.

* * * * *

(At 5:10 p.m., the jury was placed in the box and the following proceedings

were had:)

DEPUTY CLERK: Mr. . Foreman, has the jury reached a verdict?

THE FOREMAN: We have.

DEPUTY CLERK: What say you as to the defendant Clarence B. Dandridge on count one?

THE FOREMAN: Guilty.

DEPUTY CLERK: On count two?

THE FOREMAN: Not guilty.

* * * * *

282 [Filed August 15, 1958]

On this 15th day of August 1958 came again the parties aforesaid in manner as aforesaid and the same jury as aforesaid in this cause, the hearing of which was respited yesterday; whereupon after hearing the instruction of the Court, the alternate jurors are discharged and the jury retires to consider their verdict; and thereupon the said jury returns into open Court and upon their oath say that they find the defendant Guilty on Count One and Not Guilty on Count Two.

The case is referred to the Probation Officer of the Court and the defendant is remanded to the District Jail.

* * * * *

283 [Filed September 3, 1958]

JUDGMENT AND COMMITMENT

On this 29th day of August, 1958 came the attorney for the Government and the defendant appeared in person and by counsel, William T. Pace, Esq.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of

CARRYING A DANGEROUS WEAPON, as charged in Count One and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown

or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

One (1) year to Three (3) years.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Joseph C. McGarraghy
United States District Judge

285 [Filed August 29, 1958]

**AFFIDAVIT IN SUPPORT OF APPLICATION FOR LEAVE TO
PROCEED WITHOUT PREPAYMENT OF COSTS**

* * * * *

Let the applicant proceed on appeal without prepayment of costs.

/s/ Joseph C. McGarraghy
JUDGE

292 [Filed October 28, 1958]

Clarence B. Dandridge
Reg. No. 17979

October 22, 1958
Lorton, Virginia

Clarence B. Dandridge
Criminal No. 619-58

Honorable Judge Joseph C. Garragh
Your Honor,

* * * * *

296 I pray that Your Honor may see merits in my case.

As I'm writing Your Honor asking for reduction in sentence.

10/28/58
Denied.

/s/ McGarraghy J

Respectfully yours,
/s/ Clarence B. Dandridge
17979 Lorton, Va.

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,664

CLARENCE B. DANDRIDGE, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLED

166

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

OLIVER GASCH,

United States Attorney.

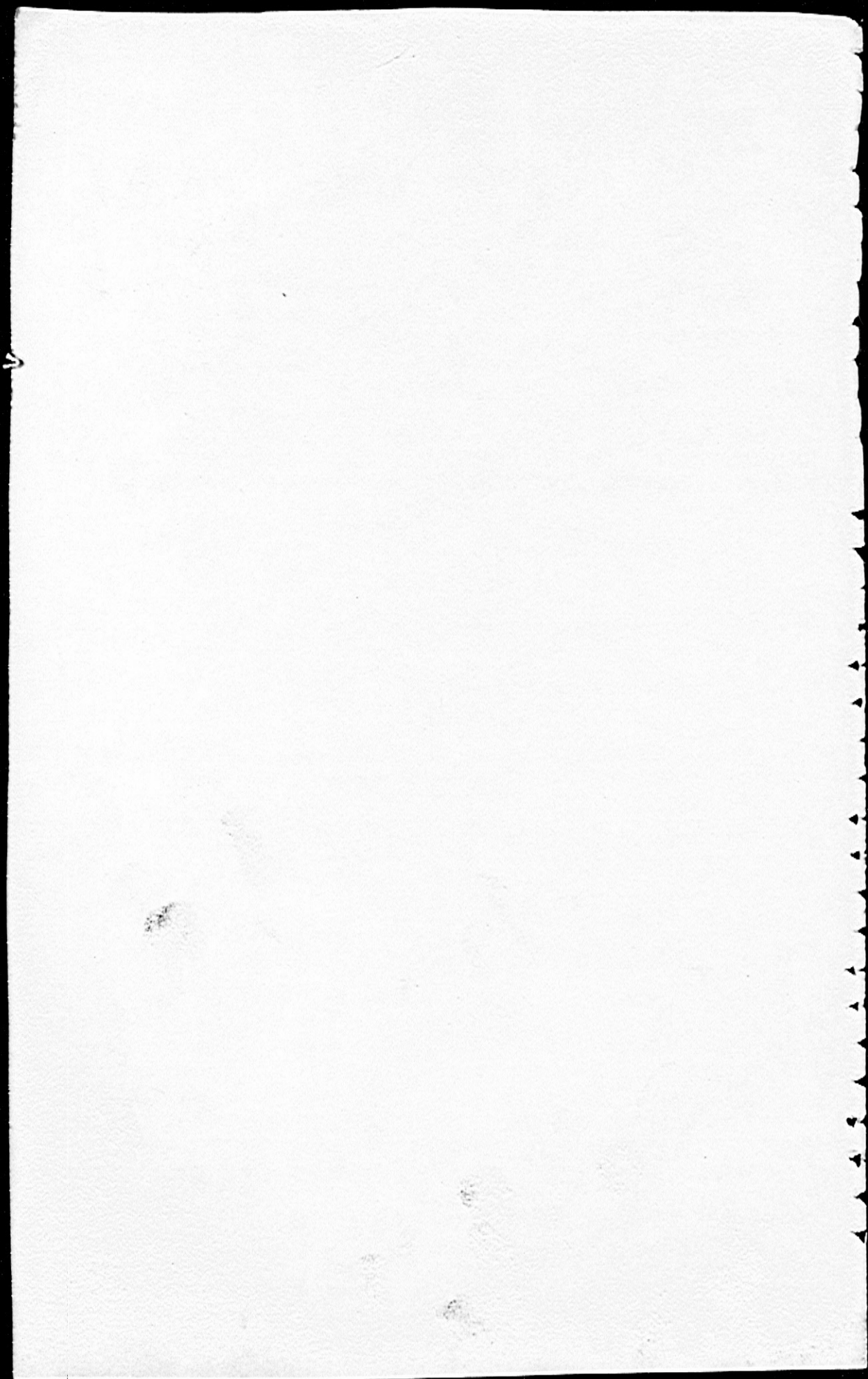
CARL W. BELCHER,

EDGAR T. BELLINGER,

Assistant United States Attorneys.

*United States Court of Appeals
For the
District of Columbia Circuit*
FILED DEC 23 1958

Joseph W. Stewart
CLERK



No. 14,664

QUESTIONS PRESENTED

In the opinion of the appellee the following questions are presented:

(1) Where a defendant pleads guilty to the first count of an indictment and the second count is dismissed by the government at the time of sentence, and the defendant is later permitted to withdraw his guilty plea, but after trial is convicted on the second count, are the defendant's Constitutional rights of double jeopardy and speedy trial violated?

(2) Where the defendant fails to tender written requests for instructions, is it reversible error for the trial court to refuse to instruct on a "theory of the case" which is not warranted by the evidence?

(3) Is the argument of the prosecutor reversible error where there is no record to show that his argument was improper or that timely objection was made?

1(x)

10-11-68

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ХЛЕБЫ

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,664

CLARENCE B. DANDRIDGE, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF FACTS

Court Proceedings

On September 4, 1956, appellant was indicted in two counts for carrying a dangerous weapon (a pistol) and assault with a dangerous weapon. On September 7, 1956, he was arraigned. On October 16, 1956, appellant in open court withdrew his plea of not guilty and entered a plea of guilty to assault with a dangerous weapon. (J. A. 2, 3.) Appellant thereafter moved to withdraw his plea of guilty, but his motion was denied. On December 7, 1956, appellant was sentenced to a term of imprisonment of from three to nine years—the remaining count being dismissed on the government's oral motion. (J. A. 4, 5.)

Appellant appealed the district court's denial of his motion to withdraw his plea of guilty, but this Court affirmed. *Dandridge v. United States*, 101 U.S. App. D. C. 114, 247 F.2d 105 (1957). Appellant then appealed to the Supreme Court which, upon the Solicitor General's confession of error, reversed. *Dandridge v. United States*, 356 U. S. 259 (1958). The certified

copy of the order of the Supreme Court (dated April 7, 1958) was filed in the district court on May 12, 1958 (J. A. 1).

On June 9, 1958, the district court vacated appellant's plea of guilty to count one, and on motion of the government, reinstated count two (carrying a dangerous weapon) (J. A. 1). On June 19, 1958, appellant, by his new court-appointed counsel, filed a motion to dismiss the indictment for lack of a speedy trial (J. A. 5). On July 7, 1958, appellant was re-indicted by the grand jury for the original offenses of July 8, 1956—assault with a dangerous weapon and carrying a dangerous weapon (J. A. 7). On July 11, 1958, appellant was arraigned on the new indictment (Cr. No. 619-58) and the original indictment (Cr. No. 906-56) was dismissed (J. A. 7, 8). The trial court, by order of August 12, 1958, denied the motion to dismiss the indictment (J. A. 8, R. 298). Trial commenced the next day, August 13, 1958 (J. A. 9).

On August 15, 1958, the jury found appellant guilty of carrying a dangerous weapon and not guilty of assault with a dangerous weapon (J. A. 54). Appellant was sentenced to a term of imprisonment of from one to three years (J. A. 54). This appeal followed (J. A. 55).

The Facts

On July 8, 1956, *Robert Allen* visited the home of *Julia Washington* at 357 McLean Avenue, Southwest (J. A. 9, 10). Appellant and his wife occupied the basement quarters (J. A. 11, 15, 18, 35). Allen and appellant had an argument and a fight (J. A. 16, 22, 33).

Thereafter, appellant took a pistol from underneath his mattress and placed it in his waistband (J. A. 34). After leaving the house, he sat on a neighbor's steps for between one and one and a half hours (J. A. 19, 35). He then walked down the street, crossed over, and re-entered the house (J. A. 35, 36). While Allen and *Frederick Taylor* were talking in the dining room on the first floor, appellant appeared at the doorway and shot Allen (J. A. 11, 16, 22, 36). Appellant admitted the shooting but claimed self-defense (J. A. 37).

CONSTITUTIONAL AMENDMENTS AND STATUTE INVOLVED

Constitution of the United States of America, Amendment V provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Constitution of the United States of America, Amendment VI provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Title 22, District of Columbia Code, Section 3204 (1951 Ed., Supp. VI) provides:

Carrying concealed weapons.—No person shall within the District of Columbia carry either openly or concealed on or about his person, except in his dwelling house or place of business or on other land possessed by him, a pistol, without a license therefor issued as hereinafter provided, or any deadly or dangerous weapon capable of being so concealed. Whoever violates this section shall be punished as provided in section 22-3215, unless the violation occurs after he has been convicted in the District of Columbia of a violation of this section or of a

felony, either in the District of Columbia or in another jurisdiction, in which case he shall be sentenced to imprisonment for not more than ten years.

SUMMARY OF ARGUMENT

Where a defendant pleads guilty to one count of an indictment and the other is dismissed at the time of sentence on the government's motion, when the guilty plea is withdrawn, the defendant may be tried on both charges without violating his Constitutional rights of double jeopardy and speedy trial.

Where the defendant fails to submit proper written requests, it is not error for the trial court to refuse to instruct on a "theory of the case" which is not warranted by the evidence.

The closing argument of the prosecutor is not reversible error where the record does not show that it was improper or that a timely objection was made.

ARGUMENT

I. No Error in Court's Charge to Jury

Appellant claims that the trial court did not instruct the jury "under the *Wilson* case." While it does not appear that appellant submitted any written requests for instruction as required by F. R. Cr. P. 30, in any event, the *Wilson* case¹ is not applicable to the case at bar. In the *Wilson* case, Wilson had a pistol under the seat of his car, and when attacked by others, he retreated until at the car where he seized the gun and fired. This Court said:

"The exigencies of the occasion justified Wilson in obtaining a weapon and using it in self-defense, so the fact that he had the pistol in his hand as he fired at his pursuers should not have been the basis of an instruction or a conviction under the fourth count [carrying a dangerous weapon]. His guilt under that count depended upon whether, in having a loaded pistol under the driver's seat of his automobile, he had the weapon 'on or about his person' in violation of the statute."

¹*Wilson v. United States*, 91 U. S. App. D. C. 125, 128 F. 2d 299 (1952).

The circumstances in the case at bar are completely different. Appellant by his own admission placed the pistol in his waist, and spent over an hour on the street and on a neighbor's steps before returning to the house where he shot Allen. Thus by his own admission, he was guilty of the offense. Clearly there was no question that he had the pistol "on or about his person." Since appellant did not submit a proposed instruction, appropriate in form and substance, and since an instruction on the *Wilson* case was not warranted by the issues or the evidence, there was no error. *McAffee v. United States*, 70 App. D. C. 142, 105 F. 2d 21 (1939); *Apel v. United States*, 247 F. 2d 277 (8th Cir. 1957).

II. No Error in Government's Closing Argument

Appellant also claims prejudice in the argument of the prosecuting attorney (App. Br. 8).² Since there is nothing in the record in this Court concerning the arguments, this contention must fall. *Wade v. United States*, — U. S. App. D. C. —, No. 14436 (decided September 19, 1958); *Braverman v. United States*, 317 U. S. 49, 55 (1942); *Moses v. Hazen*, 63 App. D. C. 104, 69 F. 2d 842 (1934).

Even if there had been some misconduct on the part of the prosecutor, and it were properly before this Court, to afford a basis for appeal the defense must make a timely objection. *Beasley v. United States*, 94 U. S. App. D. C. 406, 218 F. 2d 366 (1954), *cert. denied*, 349 U. S. 907 (1955). Objection was not made below until just before the court's charge to the jury (J. A. 44). Thus there was no opportunity for the trial court to exercise its discretion. *Funk v. United States*, 16 App. D. C. 478 (1900). As was said in *Alberty v. United States*, 91 F. 2d 461 (9th Cir. 1937):

"The court should be given the opportunity for instant correction and, if the offense be sufficiently hurtful, declare a mistrial. Counsel cannot occupy the instruments of justice, the court and jury, in an extended

² The case of *Frank v. United States*, — U. S. App. D. C. —, No. 14279 (decided October 20, 1958), upon which appellant relies, is inapplicable since there the Court was concerned with irrelevant and prejudicial evidence.

trial and without objection or motion for relief, raise such questions on appeal."

Furthermore, the prosecutor "has the right to denounce a defendant as guilty of the crime if the evidence fairly tends to prove his guilt." *United States v. Holt*, 108 F. 2d 365 (7th Cir. 1939), cert. denied, 309 U. S. 672 (1940), reh. denied, 309 U. S. 698 (1940). Compare *Pritchett v. United States*, 87 U. S. App. D. C. 374, 185 F. 2d 438 (1950), cert. denied, 341 U. S. 905 (1951).

III. No Denial of a Speedy Trial

Appellant claims that his Constitutional right to a speedy trial was violated since he was originally indicted on September 4, 1956, and was not tried until August 13, 1958 (App. Br. 9). This argument is patently frivolous.

The record clearly demonstrates that the reason for the lapse of time between the original indictment in September, 1956 and the trial in August, 1958, was that appellant chose to plead guilty to the assault with a dangerous weapon count rather than face trial. The time thereafter was consumed in appellate procedures whereby appellant sought to withdraw his plea of guilty. An accused cannot complain of a delay which he has occasioned. *Kyle v. United States*, 211 F. 2d 912 (9th Cir. 1954); *Morland v. United States*, 193 F. 2d 297 (10th Cir. 1951); *Shepherd v. United States*, 163 F. 2d 974 (8th Cir. 1947).

Until the mandate of the Supreme Court (allowing appellant to withdraw his plea of guilty) was presented in the District Court, and the plea was withdrawn, there was nothing before the court upon which a trial could be had. Thereafter the record is barren of any delay. No continuances appear. Under such circumstances there was no violation of his right to a speedy trial. In *Bayless v. United States*, 147 F. 2d 169 (8th Cir. 1945), where an accused pleaded guilty, and several years later succeeded in setting aside the judgment and obtaining a trial, in overruling his claim of double jeopardy and lack of a speedy trial, the court said:

"His own action in pleading guilty, which required the imposition of sentence and resulted in his imprison-

ment, precluded opportunity or occasion for him to demand a jury trial on the indictment until after the granting of the writ of habeas corpus, and he made no such demand. After the issuance of the writ the trial was had with reasonable dispatch."

Additionally, it is well established that " * * * a prerequisite to relief from delay in trial is a demand for trial addressed by the accused to the court * * *." *Miller v. Overholser*, 92 U. S. App. D. C. 110, 206 F. 2d 415 (1953). If this is denied, an action in the nature of mandamus must be brought in the appellate court. *Frankel v. Woodrough*, 7 F. 2d 796 (8th Cir. 1925). The only action taken by appellant which faintly resembles the required demand was his motion to dismiss for lack of a speedy trial. This was denied on August 12, 1958, and trial was had the next day. Clearly appellant had his speedy trial.

IV. No Double Jeopardy

Finally appellant claims former jeopardy since the charge of carrying a dangerous weapon was previously dismissed on the government's oral motion. This contention is plainly without merit. Originally, appellant was not tried on the charge of carrying a dangerous weapon. It was dismissed by the government when appellant was sentenced on his plea of guilty to the first count (J. A. 4). The conviction below was thus the first trial.

In *Bayless v. United States*, *supra*, with regard to the claim of double jeopardy, the court said:

"The trial did not constitute double jeopardy. Upon the adjudication in his favor in his habeas corpus proceedings to the effect that his plea of guilty and the court's sentence thereon were void, the case stood upon the indictment for arraignment and trial as though nothing had been done."

Compare *Trono v. United States*, 199 U. S. 521 (1905); *Brock v. North Carolina*, 344 U. S. 424 (1953).

CONCLUSION

Wherefore, it is respectfully submitted the judgment of the District Court be affirmed.

OLIVER GASCH,
United States Attorney.

CARL W. BELCHER,

EDGAR T. BELLINGER,

Assistant United States Attorneys.

